

REMARKS

Claims 13 and 15 were pending in the present application. By this response, both of the pending claims have been amended, and new claim 22 has been added. Accordingly, claims 13, 15, and 22 are currently under consideration.

Rejections under 35 U.S.C. §103

Both claim 13 and claim 15 were rejected under 35 U.S.C. §103 as allegedly being obvious over USP 4,235,238 to Ogiu et al. in view of USP 6,352,503 to Matsui et al. Without acceding to any of the grounds for rejecting the claims, both claims have been amended to further distinguish the cited art. In view of the present amendments, Applicant respectfully requests withdrawal of the rejections and allowance of the claims.

In particular, each of claims 13 and 15 have been amended to recite an apparatus for securing a tissue fold within a patient that includes, inter alia, an elongate member and an anchor delivery system having a distal region extending from the distal end of the elongate member, with the anchor delivery system having a trap mechanism located substantially within the distal region of the anchor delivery system, with the trap mechanism being adapted to trap the suture at or near its proximal end in order to facilitate adjustment of the length of the suture extending between the proximal and distal anchors. Support for these features is provided in the specification at, for example:

- Paragraph 0050 and FIG. 1A (describing the catheter 11, which is an example of the recited elongate member);
- Paragraph 0053 and FIGS. 2A-2B (describing the tissue grabbing assembly 18, which is an example of the recited plication apparatus extending from the distal end of the elongate member);
- Paragraphs 0124 and FIGS. 21A-G (describing the anchor assembly 60 having a suture 39, which is an example of the recited suture having a proximal end and a distal end);
- Paragraphs 0132-0133 and FIGS. 21A-G (describing a distal region of the anchor delivery system 250 which includes a needle 260 and an anchor pushrod 280 that are located substantially within the distal region of the anchor delivery system 250 and that catch against the proximal end of the suture 39, which is an example

of the recited trap mechanism located substantially within the distal region of the anchor delivery system).

These features of the claimed tissue fold securing apparatus are significant because, for example, they allow the entire anchor assembly (including the suture) to be contained within the distal region of the anchor delivery system, and thus provide the user with the ability to secure a tissue fold with an anchor assembly having a relatively short suture. As a result, the user has the choice to either remove the excess proximal end of the suture, or the user can simply leave the unneeded length of suture within the patient post-procedure. (See specification at paragraph 0134). This is an improvement over the prior securing devices in which the suture was manipulated extracorporeally (and therefore required to be cut and removed), or in which the anchor assembly did not have a suture that could be adjusted in length in situ.

In contrast, the Ogiu patent describes a coeliac tissue-suturing apparatus that is adapted for use with an endoscope. In particular, in the Ogiu device, the suturing thread 9 extends through the entire length of the device and protrudes from the proximal end of the endoscope. (See col. 4, lines 23-24; FIG. 1). As a result, the suturing thread 9 must be manipulated extracorporeally (see col. 4, lines 57-59), and the suture must be cut by a separate cutting device in a subsequent procedure (see col. 4, line 62 to col. 5, line 1). Because the Ogiu device operates in this manner, the Ogiu device does not include a trap mechanism located substantially within the distal region of an anchor delivery system, as recited in the amended claims. Also, because the Ogiu device does not have the recited trap mechanism, the device cannot reversibly trap the suture at or near its proximal end, as is also recited.

The Matsui patent provides nothing relevant to any of the foregoing features of the recited claims.

Accordingly, the combination of the Ogiu and Matsui patents fails to disclose all of the features of Applicant's claims. There is, therefore, no prima facie case of obviousness. Applicant requests withdrawal of the rejection and allowance of the claims.

New Claim 22

New claim 22 recites that the anchor delivery system further comprises an anchor pushrod in communication with the interior of the needle and adapted to eject the anchor assembly from the needle. This subject matter is similar to a portion of claim 15 that was deleted from the claim with this amendment and moved to dependent claim 22. No new matter is added.

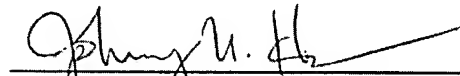
Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Similarly, unless explicitly stated, nothing contained or not contained in this paper should be construed as an assent to any of the Examiner's stated grounds for rejecting the claims, including specifically the Examiner's characterization of the teachings of the cited art and the Examiner's contentions that any combinations of cited art would have been obvious. Rather, the present amendments to the claims and Remarks are an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ02114. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



Johnny U. Han
Registration No. 45,565

Charles C. Fowler
Registration No. 39,675

Customer No. 40518
Levine Bagade Han LLP
2483 East Bayshore Road, Suite 100
Palo Alto, CA 94303
Direct: (650) 242-4217
Fax: (650) 284-2180